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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 APRIL M.¹

12 Plaintiff

13 v.

14 ANDREW M. SAUL,² Commissioner
of Social Security,

15 Defendant.
16

Case No. 2:18-cv-10083-GJS

**MEMORANDUM OPINION AND
ORDER**

17 **I. PROCEDURAL HISTORY**

18 Plaintiff April M. (“Plaintiff”) filed a complaint seeking review of Defendant
19 Commissioner of Social Security’s (“Commissioner”) denial of her application for
20 Disability Insurance Benefits (“DIB”). The parties filed consents to proceed before
21 the undersigned United States Magistrate Judge [Dkts. 11, 12] and briefs addressing
22 disputed issues in the case [Dkt. 21 (“Pltf.’s Br.”), and Dkt. 25 (“Def.’s Br.”).] The
23 Court has taken the parties’ briefing under submission without oral argument. For
24 the reasons discussed below, the Court finds that this matter should be remanded for

25 ¹ In the interest of privacy, this Order uses only the first name and the initial of
26 the last name of the non-governmental party.

27 ² Andrew M. Saul, the Commissioner of Social Security, is substituted as
28 defendant for Nancy A. Berryhill. *See* Fed. R. Civ. P. 25(d).

1 further proceedings.

2 **II. ADMINISTRATIVE DECISION UNDER REVIEW**

3 On February 22, 2015, Plaintiff filed an application for DIB. [Dkt. 15,
4 Administrative Record (“AR”) 147-153.] The Commissioner denied her initial
5 claim for benefits on August 20, 2015. [AR 81-85.] On April 11, 2018, a hearing
6 was held before Administrative Law Judge (“ALJ”) John Kays. [AR 30-50.] On
7 April 25, 2018, the ALJ issued a decision denying Plaintiff’s request for benefits.
8 [AR 12-29.] Plaintiff requested review from the Appeals Council, which denied
9 review on April 25, 2018. [AR 1-6.]

10 Applying the five-step sequential evaluation process, the ALJ found that
11 Plaintiff was not disabled. *See* 20 C.F.R. § 404.1520(b)-(g)(1). At step one, the
12 ALJ concluded that Plaintiff had not engaged in substantial gainful activity since
13 December 1, 2014, the alleged onset date, through December 31, 2018, the date last
14 insured. [AR 17.] At step two, the ALJ found that Plaintiff suffered from the
15 following severe impairments: disorder of the cervical spine, morbid obesity, bipolar
16 disorder, and anxiety disorder. [*Id.* (citing 20 C.F.R. § 404.1520(c)).] Next, the
17 ALJ determined that Plaintiff did not have an impairment or combination of
18 impairments that meets or medically equals the severity of one of the listed
19 impairments. [AR 18 (citing 20 C.F.R. Part 404, Subpart P, Appendix 1.)] The ALJ
20 found that Plaintiff had the following residual functional capacity (RFC):

21 [L]ight work as defined in 20 CFR 404.1567(b),
22 specifically, lifting 20 pounds occasionally, 10 pounds
23 frequently; standing and walking for 6; sitting for 6;
24 pushing and pulling is unlimited except for lift and carry;
25 ramps and stairs are without limitation; only occasional
26 ladders, ropes, and scaffolds; postural are without
27 limitation, except for only occasional crawling; occasional
28 overhead lifting bilaterally; no visual, communicative, or
environmental limitations; all other reaching is without
limitation; simple repetitive tasks; simple 2-step
instructions; focus and concentration up to 2 to 4 hours at
a time; interaction with supervisors and coworkers is

1 without limitation; minimum public contact; no more than
2 ordinary stresses and changes.

3 [AR 20.] Applying this RFC, the ALJ found that Plaintiff is unable to perform her
4 past relevant work. However, based on Plaintiff's age (nearly 40 years old),
5 education, and ability to communicate effectively in English, she could perform
6 representative occupations such as inspector hand packager (DOT 599.687-074),
7 assembler of electrical accessories (DOT 729.687-010), and assembler of plastic
8 hospital products (DOT 712.687-010) and, thus, is not disabled. [AR 24.]

9 **III. GOVERNING STANDARD**

10 Under 42 U.S.C. § 405(g), the Court reviews the Commissioner's decision to
11 determine if: (1) the Commissioner's findings are supported by substantial evidence;
12 and (2) the Commissioner used correct legal standards. *See Carmickle v. Comm'r*
13 *Soc. Sec. Admin.*, 533 F.3d 1155, 1159 (9th Cir. 2008); *Hoopai v. Astrue*, 499 F.3d
14 1071, 1074 (9th Cir. 2007). Substantial evidence is "such relevant evidence as a
15 reasonable mind might accept as adequate to support a conclusion." *Richardson v.*
16 *Perales*, 402 U.S. 389, 401 (1971) (internal citation and quotations omitted); *see*
17 *also Hoopai*, 499 F.3d at 1074.

18 **IV. DISCUSSION**

19 **A. Plaintiff's Ability to Perform Other Work**

20 Plaintiff contends the ALJ erred at step five of the sequential evaluation
21 because her RFC limitation to performing simple, repetitive tasks of no more than
22 two-step instructions precludes her from performing the other work identified by the
23 vocational expert ("VE"), including work as an inspector hand packager, assembler
24 of electrical accessories, and assembler of plastic hospital products. [Pltf.'s Br. at
25 11-12.] Plaintiff asserts that the descriptions for these jobs in the Dictionary of
26 Occupational Titles ("DOT") require her to perform at a higher reasoning level,
27 (Level 2), than is permitted by her RFC.

28 The DOT separates reasoning levels into six categories. Reasoning Levels 1

1 and 2 are defined as follows:

2 Level 1: Apply commonsense understanding to carry out simple one-
3 or two-step instructions. Deal with standardized situations with occasional or
4 no variables in or from these situations encountered on the job.

5 Level 2: Apply commonsense understanding to carry out detailed but
6 uninvolved written or oral instructions. Deal with problems involving a few
7 concrete variables in or from standardized situations.

8 *See* DOT, App. C. The VE testified that a hypothetical person with limitations
9 similar to Plaintiff's RFC, including a limitation to performance of "simple,
10 repetitive tasks, and simple, two-step instructions," could perform the jobs of
11 inspector hand packager (DOT 559.687-074, light, Specific Vocational Preparation
12 ("SVP") 2), assembler of electrical accessories (DOT 729.687-010, light, SVP 2),
13 and assembler of plastic hospital products (DOT 712.687-010, light, SVP 2).³ These
14 three jobs have a "GED Reasoning Level" of 2, which as seen above, requires the
15 ability to "[a]pply commonsense understanding to carry out detailed but uninvolved
16 written or oral instructions," *see id.* app. C § III. By contrast, the two-step
17 instruction limitation appears to accord with GED Reasoning Level 1, the lowest
18 level, which requires the ability to "[a]pply commonsense understanding to carry out
19 simple one- or two-step instructions." *See id.*; *see also Rounds v. Comm'r, Soc. Sec.*
20 *Admin.*, 807 F.3d 996, 1003 (9th Cir. 2015) (finding "an apparent conflict between
21 [claimant's] RFC, which limit[ed] her to performing one- and two-step tasks, and
22 the demands of Level Two reasoning"; noting "[o]nly tasks with more than one or
23 two steps would require 'detailed' instructions").

24 As Plaintiff notes, the conflict noted above closely resembles *Rounds* where
25 the Ninth Circuit determined that Reasoning Level 2 conflicts with a limitation to
26

27 ³ At the hearing, the VE testified that he believed that his opinion was
28 consistent with the DOT. [AR 48-49.]

1 “one and two step tasks.” *Rounds*, 807 F.3d at 1003. In *Rounds*, the jobs identified
2 by the vocational expert all required Reasoning Level 2 on the GED scale, and the
3 plaintiff argued her limitation to “one to two-step tasks” matched Level 1. *Id.* The
4 Ninth Circuit agreed, explaining:

5 There was an apparent conflict between *Rounds*’ RFC, which limits her
6 to performing one- and two-step tasks, and the demands of Level Two
7 reasoning, which requires a person to “[a]pply commonsense
8 understanding to carry out detailed but uninvolved written or oral
9 instructions.” The conflict between *Rounds*’ RFC and Level Two
10 reasoning is brought into relief by the close similarity between *Rounds*’
11 RFC and Level One reasoning. Level One reasoning requires a person
12 to apply “commonsense understanding to carry out simple one- or two-
13 step instructions.”

14 *Id.*, 807 F.3d at 1003. Thus, the Ninth Circuit determined there is an apparent
15 conflict between a claimant’s limitation to one and two step tasks and a job
16 requiring reasoning exceeding Level 1. *Id.*; *see also Lara v. Astrue*, 305 Fed. Appx.
17 324, 326 (9th Cir. 2008) (“Reasoning Level 1 jobs are elementary, exemplified by
18 such tasks as counting cows coming off a truck, and someone able to perform
19 simple, repetitive tasks is capable of doing work requiring more rigor and
20 sophistication-in other words, Reasoning Level 2 jobs”); *see also Grigsby v. Astrue*,
21 2010 WL 309013, at *2 (C.D. Cal. Jan. 22, 2010) (“The restriction to jobs involving
22 no more than two-step instructions is what distinguishes Level 1 reasoning from
23 Level 2 reasoning”).

24 Following *Rounds*, district courts in this Circuit have found reversible error in
25 other cases closely resembling this one. In *Banales*, for example, the ALJ
26 acknowledged a doctor’s functional assessment that the claimant could perform one-
27 or two-step instructions, but then assessed a limitation to “simple repetitive tasks”
28 without expressly discounting the one- or two-step limitation. *Banales*, 2017 WL
651941, at *2. The court found error and remanded the matter to the Commissioner.
Id. at *3. Similarly, in *Garcia v. Colvin*, 2016 WL 6304626, at *6 (C.D. Cal. Oct.

27, 2016), the court found that although the ALJ’s “simple, repetitive tasks RFC limitation” was consistent with a doctor’s “simple, routine non-stressful work” opinion, it was “plainly inconsistent with [the doctor’s] ‘easy 1, 2 step directions’ limitation which the ALJ decision never mentions.” The court reversed the Commissioner’s decision, adding that the “ALJ necessarily rejected the latter limitation without any explanation as required by Social Security regulations.” *Garcia*, 2016 WL 6304626 at *6.

Based on the reasoning in *Rounds* and its progeny, the Court finds that the ALJ’s RFC limiting Plaintiff to two-step instructions is inconsistent with the jobs identified by the VE requiring Reasoning Level 2. As also seen in *Rounds*, this error is not harmless. “Because the ALJ did not recognize the apparent conflict between [plaintiff’s] RFC and the demands of Level Two reasoning, the VE did not address whether the conflict could be resolved.” *Rounds*, 807 F.3d at 1004 (holding ALJ’s “failure to reconcile [the] apparent conflict” between limitation to “one- and two-step tasks” and “the demands of Level Two reasoning” was “not harmless”; remanding for ALJ to “determine whether there is a reasonable explanation to justify relying on the VE’s testimony”). Because the ALJ did not address the conflict—and the vocational expert did not explain his conclusions that Plaintiff could perform the Level 2 reasoning jobs despite the limitation to two-step instructions—the record cannot support the deviation from the Dictionary of Occupational Titles. *See Rawlings v. Astrue*, 318 Fed. Appx. 593, 595 (2009) (“Only after determining whether the vocational expert has deviated from the Dictionary of Occupational Titles and whether any deviation is reasonable can an ALJ properly rely on the vocational expert’s testimony as substantial evidence to support a disability determination.”)

As a result, the Court is unable to determine whether substantial evidence supports the ALJ’s step five finding with respect to the jobs identified by the VE. Accordingly, here, as in *Rounds*, “[o]n remand, the ALJ must determine whether

1 there is a reasonable explanation to justify relying on the VE's testimony." *Rounds*,
2 807 F.3d at 1003.

3 V. CONCLUSION

4 When the Court reverses an ALJ's decision for error, the Court "ordinarily
5 must remand to the agency for further proceedings." *Leon v. Berryhill*, 874 F.3d
6 1130, 1132 (9th Cir. 2017); *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th Cir. 2004)
7 ("the proper course, except in rare circumstances, is to remand to the agency for
8 additional investigation or explanation"); *Treichler v. Commissioner*, 775 F.3d
9 1090, 1099 (9th Cir. 2014). But the Court does have discretion to make a direct
10 award of benefits under the "credit-as-true" rule, which asks whether: "(1) the
11 record has been fully developed and further administrative proceedings would serve
12 no useful purpose; (2) the ALJ has failed to provide legally sufficient reasons for
13 rejecting evidence, whether claimant testimony or medical opinion; and (3) if the
14 improperly discredited evidence were credited as true, the ALJ would be required to
15 find the claimant disabled on remand." *Garrison v. Colvin*, 759 F.3d 995, 1020 (9th
16 Cir. 2014). Each part of this three-part standard must be satisfied for the Court to
17 remand for an award of benefits and it is only the "unusual case" that meets this
18 standard. *Benecke*, 379 F.3d at 595; *see, e.g., Treichler*, 775 F.3d at 1105 ("[A]
19 reviewing court is not required to credit claimants' allegations regarding the extent
20 of their impairments as true merely because the ALJ made a legal error in
21 discrediting their testimony."). Moreover, if "an evaluation of the record as a whole
22 creates serious doubt that a claimant is, in fact, disabled," a court must remand for
23 further proceedings "even though all conditions of the credit-as-true rule are
24 satisfied." *Garrison*, 759 F.3d at 1021; *see also Leon*, 874 F.3d at 1133 ("an award
25 under [the credit-as-true] rule is a rare exception, and the rule was intended to deter
26 ALJs from providing boilerplate rejections without analysis"); *Brown-Hunter v.*
27 *Colvin*, 806 F.3d 487, 495 (9th Cir. 2015) (as amended) ("The touchstone for an
28 award of benefits is the existence of a disability, not the agency's legal error.").

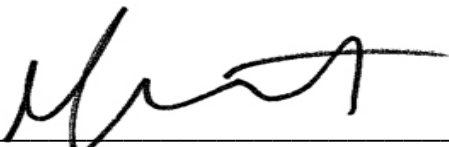
1 Here, further proceedings would be useful to allow the ALJ to follow-up with
2 the VE about Plaintiff's ability to perform other representative occupations.
3 Therefore, remand for further proceedings is required.⁴ *See Treichler*, 775 F.3d at
4 1107; *see also Connett v. Barnhart*, 340 F.3d 871, 876 (9th Cir. 2003).

5 For all of the foregoing reasons, **IT IS ORDERED** that:

- 6 (1) the decision of the Commissioner is REVERSED and this matter is
7 REMANDED for further administrative proceedings consistent with this
8 Memorandum Opinion and Order; and
9 (2) Judgment be entered in favor of Plaintiff.

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11 **IT IS SO ORDERED.**

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13 DATED: March 5, 2020

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16 GAIL J. STANDISH
17 UNITED STATES MAGISTRATE JUDGE
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25 ⁴ The Court has not reached the remaining issue raised by Plaintiff regarding
26 whether the ALJ adequately assessed Plaintiff's credibility, except as to determine
27 that reversal with the directive for the immediate payment of benefits would not be
28 appropriate at this time. However, the ALJ should address Plaintiff's additional
contentions of error when evaluating the evidence on remand. [*See* Pltf.'s Br. at 3-
13.]